

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2009-1110-04EE</b>
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY California Film Commission		AGENCY FILE NUMBER (if any)	

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) California Film and Television Tax Credit Program		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2009-0521-04E	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) <b>10</b>		AMEND 5500,5501,5502,5503,5504,5505,5506,5507	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Terri Toohey		TELEPHONE NUMBER (916) 768-5638	FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) terri.toohey@bth.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

November 10, 2009

TYPED NAME AND TITLE OF SIGNATORY

Amy Lemisch, Director

For use by Office of Administrative Law (OAL) only

Title 10  
Chapter 7.75  
CALIFORNIA FILM & TELEVISION TAX CREDIT PROGRAM

**Section 5500. Definitions**

(a) **"Applicant"** is any corporation, partnership, limited partnership, limited liability corporation (LLC) or other entity or individual that is principally engaged in the production of the "qualified motion picture" and that controls the film or television program during pre-production, production and post-production. The applicant is the qualified taxpayer that upon final approval will receive the tax credit certificate.

(b) **"Basic Cable"** means non-broadcast television programming that is transmitted to the viewer via cable, satellite, wireless, or internet protocol for a basic subscription fee, as opposed to a separate channel or group of channels for which the viewer pays a separate per program or per channel fee (which fee is a substantial charge relative to other charges made to the subscriber).

(c) **"California Film Commission"** (CFC) is a state entity established and described in Government Code sections 14998 et. seq. that among other functions facilitates and promotes motion picture and television production in the State of California.

(d) **"Credit Allocation Letter"** is the document issued by the California Film Commission reserving an amount of tax credits to an applicant having a "qualified motion picture" based on an estimate of "qualified expenditures".

(e) **"Director"** is the person or persons identified and described in Government Code section 14998.3 and also called Director of the Film Commission, Director of the Commission, or Director of the Office.

(f) **"Feature Film"** means a production of a film intended for commercial distribution to a motion picture theater, directly to the home video market, or via the Internet that has a running time of at least seventy-five (75) minutes in length.

(g) **"Miniseries"** means a motion picture, produced for initial exploitation on television, which contains a scripted storyline requiring two or more consecutive hours of programming (inclusive of commercial advertisements and interstitial programming, defined as short programming which is often shown between televised movies or other events).

(h) **"Movie of the Week,"** which may also be known as "MOW" or "made for television movie," means a motion picture, produced for initial exploitation on television, which contains a scripted storyline requiring two or more consecutive hours of programming (inclusive of commercial advertisements and interstitial programming).

(i) **"Producer"** means any individual who receives an on-screen producer credit including but not limited to any of the following titles: producer, co-producer, line producer, executive producer, co-executive producer, associate producer, supervising producer, post producer, or visual effects producer.

(j) "Reality Program" means a program depicting real events and non-actors through actual footage which presents persons engaged in purportedly unscripted situations; no fictional characters are created.

(k) "Strip Show" means television programming in which three or more episodes are regularly produced in their entirety in one week (e.g., "Judge Judy", "Entertainment Tonight").

(l) "Television Season" means the initial exhibition of a set of television episodes lasting no less than six episodes and no more than 30 episodes within a period of twelve (12) months.

(m) "Television Series" also known as "episodic television," means a regularly occurring production.

(n) "Total Production Budget" means the Budget used by the Qualified Taxpayer and production company for all Qualified Motion Picture purposes, including complying with budget thresholds, and shall include but is not limited to Above-The-Line costs including wages, and Below-The-Line costs including post-production, insurance, rights, and licensing fees. Total Production Budget shall include wages, goods, and services performed and incurred within and outside of California.

Authority Cited: Section 17053.85(e) and 23685(e), Revenue and Taxation Code, Section 11152, Government Code. Reference: Section 17053.85 and 23685, Revenue and Taxation Code, Section 14998.1, Government Code.

#### **Section 5501. Application Process For Tax Credit Allocation**

(a) The open allocation periods for the California Film & Television Tax Credit Program shall be announced by the Director of the CFC prior to each new fiscal year. The California fiscal year is from July 1 to June 30. The announcement shall include a description of the application process and the application filing.

(b) Applications will be accepted on a first-come, first-served basis as determined by the date applications are received by the Director of the CFC. In the event that more than one application is received on the same date, a random selection process administered by the Director of the CFC shall determine the order of all applications received on the same date.

(c) Applicants for the tax credit allocation shall complete and submit the California Film & Television Tax Credit Program Application Form, CFC Form A, (New 6/1/2009), hereby incorporated by reference.

(1) Completed applications shall be submitted at least thirty (30) calendar days prior to the start of Principal Photography in California. Any expenditures for services, wages, or goods incurred prior to application approval will not be considered Qualified Expenditures.

(2) An Applicant shall not submit duplicate applications for a project. Submittal of duplicate applications shall be good cause to disqualify an applicant from the tax credit program.

(3) A Television Series, shall submit one application for the entire Television Season of that Television Series.

(4) Incomplete applications shall not be eligible for tax credit allocation. The Director of CFC shall notify the Applicant of any deficiencies and shall require all information to be submitted within three (3) business days of notification or the application shall be removed from the queue.

(d) The application shall include the following supporting documentation:

(1) A Budget for the Qualified Motion Picture Project that shall include:

(A) A Budget indicating the Qualified Expenditures, minus financing cost. One hard copy and an electronic copy in an industry standard budgeting program. If completion bond fees affect the eligibility of a production to qualify for the California Film & Television Credit Program, the costs are allowed to be deducted from the Budget. If the applicant omits the completion bond fee for the purpose of falling below the ten million dollar (\$10,000,000) or the seventy-five million dollar (\$75,000,000) thresholds, the completion bond fee shall not be considered a Qualified Expenditure.

(B) A Television Series shall be allowed to submit a pattern budget including all amortization costs, in lieu of documents required in subsection (d)(1)(A) above.

(C) Animated productions shall submit a Budget as described in subsection 5501(d)(1)(A) including, but not limited to direct labor and an appropriate allocation of indirect labor including but not limited to: Engineering, Software developers, Project coordinators/line producer, Visual f/x supervisors, Creative Directors, Finance and Accounting personnel; materials required for the production of a specified animated production; insurance; legal fees; communication expenses; depreciation on capitalized shared equipment used in creating content; repairs and maintenance on shared equipment used in creating content; occupancy costs (including rent, depreciation on leasehold improvements, utilities, security.)

(2) One-Line schedule ("production board"). One hard copy and an electronic PDF (Portable Document Format) file.

(A) A Television Series shall be allowed to submit a production calendar, including the start and end dates of the season, the number of in-state and out-of-state principal photography days, and the total number of episodes, in lieu of a one-line shooting schedule.

(B) Animated productions shall be allowed to submit a production schedule indicating sequences and the start and end dates of major departments including modeling, animation, lighting and effects, in lieu of a one-line shooting schedule.

(3) Synopsis of the screenplay, teleplay or series. One hard copy and electronic PDF or Word document.

(4) Screenplay for the production, electronic PDF. If for confidentiality a script is not publicly available, submit a one-line schedule in continuity order.

(5) Financing Sources Report, CFC Form B, (New, 6/1/2009), hereby incorporated by reference. Applicants that indicate the qualified motion picture production is 100% self-financed in Section Five on the Application Form, CFC Form A, (New 6/1/2009), shall not be required to submit the Financing Sources Report.

(6) Relocation Statement. For a TV Series that has filmed all of its prior season(s) outside of California (minimum of six (6) episodes), and intends to relocate to California, the applicant shall supply a certification stating that the tax credit provided is the primary reason for relocating signed by the Qualified Taxpayer or a representative of the Qualified Taxpayer.

(7) Independent Film Declaration, CFC Form C (New 6/1/2009), hereby incorporated by reference.

(e) Within 20 business days of receipt of the completed application and all requested supporting documents, the Director of the CFC will notify the applicant of accepted or rejected status. An approved application shall meet the Eligibility Requirements in Section 5502 of these regulations. Upon approval, a Credit Allocation Letter, CFC Form D, (New 6/1/2009), hereby incorporated by reference, shall be issued to the applicant indicating the amount of tax credits reserved, as provided in Section 5504.

(f) Within one month of issuance of the Credit Allocation Letter, an Applicant shall be required to have two of the following staff members attend an orientation meeting with the Director of CFC or his/her designee: a primary producer, unit production manager, a production accountant and/or other appropriate personnel.

(g) Any Television Series that has been approved and issued a Credit Allocation Letter, shall be placed at the top of the queue for an open allocation period in each subsequent year in the life of that series whenever credits are assigned within a fiscal year. Queue placement in subsequent years will be based on the year of original application and original queue number assigned for that series. Each television series must submit a new application for each season prior to any open application period.

(h) Principal Photography shall commence no later than 180 calendar days after the Credit Allocation Letter is issued. If the production does not begin filming prior to the 180-day deadline, the tax credit allocation shall be revoked.

Authority Cited: Section 17053.85(e) and 23685(e), Revenue and Taxation Code, Section 11152, Government Code. Reference: Section 17053.85(g) and 23685(g), Revenue and Taxation Code, Section 14998.1, Government Code.

#### **Section 5502. Eligibility Determination**

(a) Applicant is planning to produce a "Qualified Motion Picture".

(b) The "Qualified Motion Picture" complies with the provisions of sections 17053.85(b)(15) and 23685(b)(15) of the Revenue and Taxation Code.

(c) The Applicant plans to film at least 75% of Principal Photography days wholly in California or 75% of the Total Production Budget will be incurred in California. Principal Photography days in California shall not include the filming of primarily backgrounds, visual effects, action and crowd scenes by the second, stunt, or visual effects units.

(d) To qualify as a Television Series that relocated to California, the Television Series shall meet the following criteria:

(1) A certification from the taxpayer that the tax credit provided pursuant to this section is the primary reason for relocating to California.

(2) Each episode shall be any program length and may be produced for distribution in any media outlet including, but not limited to, basic cable, pay (premium) cable, or network broadcast.

(e) A Television Pilot is not considered a "Qualified Motion Picture" and shall not be eligible for tax credit. Television Pilot means the initial episode produced for a proposed Television Series. This category shall include shorter formats which are known as "television presentation," a production of at least fifteen (15) minutes in length, produced for the purposes of selling a proposed television series, but not intended for broadcast.

(f) A "Qualified Motion Picture" issued a Credit Allocation Letter that exceeds the maximum Total Production Budget of \$75 million, shall be disqualified and the tax credit allocation shall be revoked.

(g) An Independent Film issued a Credit Allocation Letter in accordance with the provisions in section 17053.85(b)(6) of the Revenue and Taxation Code, that exceeds the Total Production Budget of \$10 million, shall be reclassified as a Feature Film. The Applicant shall not be required to submit a new application, but the credit allocation percentage will be adjusted as provided in 5504(a), and the application shall be placed at the end of the queue for any available tax credits in the non-Independent Film allocation category.

(h) Movies of the Week and Mini-Series may be considered an Independent film providing they comply with the provision in section 17053.85(b)(6) and 23685(b)(6) of the Revenue and Taxation Code.

(i) Revocation of the tax credit allocation is final and not subject to administrative appeal or review.

Authority Cited: Section 17053.85(e) and 23685(e), Revenue and Taxation Code, Section 11152, Government Code. Reference: Section 17053.85 and 23685, Revenue and Taxation Code, Section 14998.1, Government Code.

### **Section 5503. Qualified Expenditures**

(a) The Qualified Expenditures shall be allowed as provided in sections 17053.85(b)(16) and 23685(b)(16) of the Revenue and Taxation Code.

(1) If any portion of the costs of tangible personal property are required to be capitalized for state income or franchise tax purposes, then Qualified Expenditures will include the proportionate amount of any depreciation or amortization expense allowable during the period of time the property was used in the Qualified Motion Picture within the state, as computed under Part 10 or Part 11 of Division 2 of the Revenue and Taxation Code, and shall also include any amount treated as not properly chargeable to a capital account (within the meaning of section 17255 of the Revenue and Taxation Code) that is allowable as a deduction during such period.

(2) Qualified Wages shall also include payments to a Qualified Entity, registered to do business in California, to the extent their services are performed in California, including but not limited to Qualified Expenditures as defined in 17053.85(b)(13) and 23685(b)(13) of the Revenue and Taxation Code.

(b) The non-qualifying expenditures are as provided in sections 17053.85(b)(18)(B) and 23685(b)(18)(B) of the Revenue and Taxation Code. The following expenses shall not be allowed as qualified expenditures:

(1) State and Federal Income taxes.

(2) Certified Public Accountant Expenses for the report required in section 5506.

(3) Expenditures for services performed outside the state of California are not considered qualified expenditures e.g., digital visual effects work which is physically performed out-of-state.

(4) Expenditures for the exhibition of the Qualified Motion Picture, including but not limited to digital cinema distribution copies and release prints.

Authority Cited: Section 17053.85(e) and 23685(e), Revenue and Taxation Code, Section 11152, Government Code. Reference: Section 17053.85 and 23685, Revenue and Taxation Code, Section 14998.1, Government Code.

#### **Section 5504. Tax Credit Allocation**

(a) The amount of tax credit allocated shall be based on the percentage of the qualified expenditures as provided in sections 17053.85(a) and 23685(a) of the Revenue and Taxation Code.

(b) If all tax credits have been allocated for the fiscal year, Qualified Motion Pictures shall be placed in the queue in the order their applications were received until either: credits become available that fiscal year, the production elects to be removed from the queue, or until the end of the fiscal year.

(c) Ten million dollars (\$10,000,000.00) in tax credits shall be reserved for allocation to Independent Films per fiscal year.

Authority Cited: Section 17053.85(e) and 23685(e), Revenue and Taxation Code, Section 11152, Government Code. Reference: Section 17053.85 and 23685, Revenue and Taxation Code.

### **Section 5505. Approved Applicant Responsibility**

(a) An applicant issued a Credit Allocation Letter shall be required to comply with the following during the production period:

(1) Submit by email to the Director of the CFC, on the first day of principal photography, the Daily Call Sheet, signed by the Production Manager. Documents shall be in a PDF file format.

(2) Submit by email to the Director of the CFC the final production reports for each day of Principal Photography signed by the Unit Production Manager; may be submitted weekly in arrears in an electronic file in PDF format.

(3) Submit by email to the Director of the CFC within five (5) business days after each month end, the Monthly Status Report, CFC Form I (New, 6/1/2009), hereby incorporated by reference. This report shall include project status information, including any anticipated changes in the estimated qualified expenditures.

(A) After the submittal of the original Monthly Status Report, the applicant shall not be required to submit a report monthly if there is no change in the project status information.

(B) The Applicant shall email to the Director each month that there is no change in the last Monthly Status Report. The Applicant shall include the Credit Letter Allocation number on the email.

(4) Fiscal Year-End Expenditure Report, Form K, (New 6/1/2009), hereby incorporated by reference, for any production that extends over more than one State of California fiscal year.

Authority Cited: Section 17053.85(e) and 23685(e), Revenue and Taxation Code, Section 11152, Government Code. Reference: Section 17053.85(g), 23685(g), Revenue and Taxation Code.

### **Section 5506. Credit Certificate Issuance Process**

(a) The Applicant shall be required to submit the following documents upon completion of the project:

(1) Request for Tax Credit Certificate, CFC Form J, (New 6/1/2009), hereby incorporated by reference.

(2) Proof of copyright registration of the screenplay or teleplay or proof of copyright registration of the motion picture, television series or television movie.

(3) A letter from the post production facility or post production department on its letterhead certifying the date of completion of post production .

(4) List of all Cast, Crew, and Vendors for the project. PDF electronic file.



(5) Expenditure Summary Report, CFC Form F, (New 6/1/2009), hereby incorporated by reference.

(6) Employment Diversity Report, CFC Form H, (New 6/1/2009), hereby incorporated by reference.

(7) A current, certified, report verifying the Budget, Qualified Expenditures and final cost report, prepared and signed by a California licensed Certified Public Accountant.

(8) Main and End Title Final "Checker" or "Galley", signed by a production representative which may include Credits Administration, Legal Affairs, or the Post Production Supervisor. The Checker or Galley is the actual layout of the titles normally produced by a Title House or other post-production facility. Submit one electronic copy in PDF.

(9) Aggregate Filming Days Summary. Each applicant shall provide a report that includes the total number of filming days in California and outside of California for motion picture productions by category produced by the applicant and its controlled affiliates during the calendar year of the application.

(b) The Qualified Motion Picture shall be considered complete when the process of post production has been finished and a final composite answer print, delivery air master, or digital cinema files of the qualified motion picture is produced.

(c) The production shall be completed in a timely manner as required in sections 17053.85(b)(15)(B)(ii) and 23685(b)(15)(B)(ii) of the Revenue and Taxation Code

(d) The Director of the CFC shall review all the required materials submitted by the applicant to determine that the applicant meets all the criteria for the program. During the review, the Director of CFC may request additional documentation to determine if the production is a Qualified Motion Picture and to verify the Qualified Expenditures. The Director of CFC shall approve or disapprove the request for the Credit Certificate.

(e) Upon disapproval of the request for a tax credit certificate, the Director of the CFC shall provide the applicant with a notice of disapproval stating the reasons for the disapproval. Disapproval is final and not subject to administrative appeal or review.

(f) Upon approval, the Tax Credit Certificate, CFC Form M, (new 6/1/2009), hereby incorporated by reference, shall be issued to the "Qualified Taxpayer". If the entity that incurs the Qualified Expenditures is a partnership, limited liability corporation or subchapter S corporation (pass-through entity), that entity is the "qualified taxpayer" for purposes of filing the tax credit application and receiving the final Tax Credit Certificate.

Authority Cited: Section 17053.85(e) and 23685(e), Revenue and Taxation Code, Section 11152, Government Code. Reference: Section 17053.85 and 23685, Revenue and Taxation Code, Section 14998.1, Government Code.

#### **Section 5507. On Screen Credit and Promotional Requirements**

(a) All productions that are issued a Tax Credit Certificate shall be required to comply with the following provisions:

(1) Provide an on-screen acknowledgement to: CALIFORNIA FILM COMMISSION, except where that acknowledgement may be prohibited by the Children's Television Act or any other local, state, or federal government policy.

(2) Provide five (5) production stills in digital file format cleared by the production company and with cast approvals for promotional use by the CFC.

(3) Provide an electronic Press Kit, if available.

Authority Cited: Section 17053.85(e) and 23685(e), Revenue and Taxation Code, Section 11152, Government Code. Reference: Section 17053.85 and 23685, Revenue and Taxation Code, Section 14998.1, Government Code.



Department Use Only:

QUEUE #

DATE RECEIVED:

## California Film & Television Tax Credit Program

### APPLICATION FORM

Please carefully read the guidelines before filling out this application. Please consult your tax advisor to determine the tax implications for the applicant and any partners, members or shareholders prior to filling out this form.

#### SECTION ONE: COMPANY INFORMATION

Date:

Title of Production:

Production Company:

Date of Formation:

The Applicant is any corporation, partnership, limited partnership, limited liability corporation (LLC) or other entity or individual that is principally engaged in the production of the "qualified motion picture" and that controls the film or television program during pre-production, production and post-production. **The applicant is the qualified taxpayer that upon final approval will receive the tax credit certificate.**

#### Applicant Information

Applicant name:

Applicant title:

Company name:

Company address:

City:

State:

ZIP / postal code:

Country:

Phone:

Cell phone:

Fax:

Email:

Taxpayer ID # :

Seller's Permit # (if applicable):

#### Type of entity:

☐ Individual proprietorship

☐ Subchapter S Corporation

☐ Corporation

☐ Partnership

☐ Limited Liability Company

☐ Other \_\_\_\_\_

**SECTION TWO: PRODUCTION INFORMATION****Primary Production Company Representative**

Name:		
Title:		
Address:		
City:	State:	ZIP code:
Phone:	Cell Phone:	
Fax:	Email:	

**Production Contact: Producer**

Name:		
Email:	Cell Phone:	Phone:

**Production Contact: Line Producer**

Name:		
Email:	Cell Phone:	Phone:

**Production Contact: Production Manager**

Name:		
Email:	Cell Phone:	Phone:

**Production Contact: Production Accountant**

Name:		
Email:	Cell Phone:	Phone:

**Production Contact: Post Production Accountant (if known)**

Name:		
Email:	Cell Phone:	Phone:

**Other Key Production Personnel: Director**

Name:
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**Other Key Production Personnel: Executive Producer**

Name:
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**Other Key Production Personnel: Lead Actor/Actress**

Name:
Name:

**Payroll Service**

Name of service:		
Paymaster:		
Address:		
City:	State:	ZIP code:
Phone:	Email:	

**Distributor Information (if known):**

Company Name:		
Address:		
City:	State:	ZIP code:
Phone:	Email:	

**SECTION THREE: ELIGIBILITY DETERMINATION****A. TYPE OF PRODUCTION**

<input type="checkbox"/> Feature Film	<input type="checkbox"/> Relocating TV Series
<input type="checkbox"/> Independent Feature Film	previous location _____
<input type="checkbox"/> Mini-series	____ # of episodes previously shot
<input type="checkbox"/> Mini-series (Independent)	____ # of episodes included in this season
<input type="checkbox"/> Movie of the week	<input type="checkbox"/> TV series (Basic Cable)
<input type="checkbox"/> Movie of the week (Independent)	____ # of episodes included in this season

**B. PRINCIPAL PHOTOGRAPHY DAYS**

Start of principal photography:		End of principal photography:	
Estimated completion of post production:			
Shoot days:	A	Total in Los Angeles area	_____
	B	Total outside 30-mile studio zone:*	_____
	C	Total CA shoot days (A+B)	_____
	D	Total non-CA shoot days	_____
	E	Total shoot days (C+D)	_____
	F	% of CA shoot days w/ respect to total shoot days	_____
		$C + E \times 100 =$	_____ %
* Please list the counties you anticipate filming will occur:			
_____			
_____			
If shooting outside the state, please indicate state or country:			
_____			
_____			
_____			

### C. TOTAL PRODUCTION BUDGET

Will 75% of the Total Production Budget be spent in the state of California?

☐ yes ☐ no

### SECTION FOUR: ESTIMATING TAX CREDIT ALLOCATION

A.	Total Qualified wages:	
B.	Total Qualified(non-wage)expenditure:	
C.	Total Qualified Expenditures:(A+B)	

Calculate tax credit allocation utilizing applicable qualified expenditure percentage for your production:	Independent Film/Relocating TV series: 25 % x $\frac{\text{total qualified wages (A)}}{\text{total qualified expenditures (C.)}}$ = _____
	Other qualified motion pictures: 20 % x $\frac{\text{total qualified expenditures (B)}}{\text{total qualified expenditures (C.)}}$ = _____

### SECTION FIVE: REQUIRED MATERIALS

- ☐ A budget in hard copy and an electronic file in an industry standard budgeting program indicating qualified expenditures.
- ☐ One-line Shooting Schedule (Production Board) - paper and electronic PDF copy OR
  - ☐ Production Schedule (for animated productions) OR
  - ☐ Production Calendar (for TV series)
- ☐ Synopsis of a screenplay, teleplay, or series
- ☐ Screenplay - PDF electronic copy preferred; if not, 2-sided paper copy. If script is not available for confidentiality reasons, submit a one-line schedule in continuity order
- ☐ Financing Sources Report CFC Form B, (new 6/1/2009) OR
  - If 100% self-financed production, please check box ☐
- ☐ Relocation Statement (if applicable)
- ☐ Independent Film Declaration CFC Form C, (new 6/1/2009) (if applicable)

### SECTION SIX: SIGNATURE

I certify under penalty of perjury under the laws of the State of California that I examined this application, including all attachments and that to the best of my knowledge its content is true and correct.

\_\_\_\_\_  
Signature of Qualified Taxpayer/Representative of Qualified Taxpayer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title



## California Film & Television Tax Credit Program

### FINANCING SOURCES REPORT

Please indicate all financing sources and information requested below. (Use separate sheet if necessary)

Production Company:	Production Title:
---------------------	-------------------

Financing Source and Name of Funds	Amount	%
Total percentage of funds:		

I certify under penalty of perjury under the laws of the State of California that I examined this application, including all attachments and that to the best of my knowledge its content is true and correct.

\_\_\_\_\_  
Signature of Qualified Taxpayer/Representative of Qualified Taxpayer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title



## California Film & Television Tax Credit Program

### INDEPENDENT FILM DECLARATION

Name of Production:	Date:
Applicant name:	Title:
Company name:	

The Applicant is any corporation, partnership, limited partnership, limited liability corporation (LLC) or other entity or individual that is principally engaged in the production of the "qualified motion picture" and that controls the film or television program during pre-production, production and post-production. **The applicant is the qualified taxpayer that upon final approval will receive the tax credit certificate.**

Ownership: Please list names of all company owners and percentages of ownership (use additional page if necessary)

Name/Entity	Ownership (%)

The undersigned hereby attests that \_\_\_\_\_ is not owned by a publicly traded  
company name  
company OR that publicly traded companies do not own (directly or indirectly) more than 25 % of  
company name

I certify under penalty of perjury under the laws of the State of California that I examined this application, including all attachments and that to the best of my knowledge its content is true and correct.

\_\_\_\_\_  
Signature of Qualified Taxpayer/Representative of Qualified Taxpayer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name





## California Film & Television Tax Credit Program

### CREDIT ALLOCATION LETTER

Credit Allocation Letter #:	Date:
Qualified Taxpayer ID #:	Seller's Permit #:
Title of Production:	
Production Company Name:	
Type of Production:	
Start date of Pre-Production:	
End date of Post - Production:	
Tax Credit Allocation Reserved:	
Applicant Name (will receive the tax credit certificate):	
Company Name:	
Production Contact Name:	Title:

The allocation of tax credits indicated in this letter are not guaranteed but are only an estimate. Final granting of tax credits is subject to an examination and verification of the claimed Qualified Expenditures, pursuant to the laws and regulations of the California Film and Television Tax Credit Program.

\_\_\_\_\_  
Amy Lemisch, Director  
California Film Commission

\_\_\_\_\_  
Date



## California Film & Television Tax Credit Program

### EXPENDITURE SUMMARY REPORT

#### APPLICANT INFORMATION

Production Title:	Credit allocation letter #:	
Applicant Name:	Title:	
Company Name:		
Company Address:		
City:	State:	ZIP:
Country:	Phone:	Cell phone:
Fax:	Email:	

#### PRODUCTION SCHEDULE

Start of principal photography:	End date of postproduction:
Total Principal Photography Days in California:	

#### LABOR STATISTICS

Total Crew/Cast/Labor Man-Days:
Total Extras & Stand-ins Man-Days:
Total # of residents hired:
Total # of non-residents hired:

#### TAXES:

Total Expenditures on Taxable Goods and Services:
Total Payroll Taxes Withheld:

**QUALIFIED EXPENDITURES:**

<b>E:</b> Qualified Wages (excluding post):	<b>E2:</b> Qualified Wages Post-Production only:
<b>F:</b> Qualified (Non-Wage) Spend (excl. post):	<b>F2:</b> Qualified ( Non-Wage) Spend Post-Production only:
<b>G:</b> Total Qualified Expenditures ( <b>E+F</b> ) (excluding post):	<b>G2:</b> Total Qualified Expenditures Post-Production only ( <b>E2+F2</b> ):
<b>Total tax credit allocation due:</b>  $\frac{\text{(G + G2):}}{\text{eligible tax credit \%}} \times \text{\%} =$	

I certify under penalty of perjury under the laws of the State of California that I examined this application, including all attachments and that to the best of my knowledge its content is true and correct.

\_\_\_\_\_  
Signature of Qualified Taxpayer/Representative of Qualified Taxpayer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

**This report was prepared by:**

Signature:	Date:
Printed Name:	Title:
Phone:	Email:

**Financial information on this report verified by:**

CPA firm:	
CPA signature:	Date:
CPA name:	



## California Film & Television Tax Credit Program

### EMPLOYMENT DIVERSITY REPORT

THIS FORM MUST BE COMPLETED FOR EACH MOTION PICTURE AND EACH SEASON A SERIES IS PRODUCED.

#### APPLICANT INFORMATION

Applicant Name:	Credit Allocation Letter #:
Title:	
Production Company Name:	
Production Title:	

Complete the information below for cast and crew (do not include extras) to the extent possible and based only upon information provided by the individual cast and crew members in their payroll start information.

	No. of hires		No. of days worked	
	Male	Female	Male	Female
Asian/ Pacific				
Black				
Caucasian				
Latino/ Hispanic				
N. American Indian				
Unknown/ Other				
Total				



## California Film & Television Tax Credit Program

### MONTHLY STATUS REPORT

Please complete and submit this form within five business days after the end of the month following the issuance of the tax credit allocation letter, from pre-production to completion of post-production. Monthly Status Reports should be sent by email to [incentiveprogram@film.ca.gov](mailto:incentiveprogram@film.ca.gov)

Production Title:	<b>Department Use Only:</b> <b>DATE RECEIVED:</b>
Applicant Name:	
Production Company:	Credit Allocation Letter #:
Report for the Month Ending:	

<b>1a. Has there been a change in the production schedule and budget provided as part of the Tax Credit application submitted to the California Film Commission?</b> <i>If yes, please provide details under Supplemental Information on the next page.</i>	<input type="radio"/> yes <input type="radio"/> no
<b>1b. Current production cycle status</b>  <input type="radio"/> Pre-production <input type="radio"/> Principal Photography <input type="radio"/> Post-production <input type="radio"/> Post-completion/Reporting	
<b>1c. Has there been a change to the duration of the production, number of filming days, date of commencement of principal photography in CA and/or date of completion of the project since the Tax Credit application was submitted to the California Film Commission or the last monthly report, whichever is later?</b> <i>If yes, indicate new dates and provide details under Supplemental Information on the next page.</i>	<input type="radio"/> yes <input type="radio"/> no
<b>2a. Has there been any significant change in financing for the production described in the Financing Sources Report submitted to the California Film Commission?</b> <i>If yes, please provide details under Supplemental Information on the next page and answer 2b.</i>	<input type="radio"/> yes <input type="radio"/> no
<b>2b. Will changes in financing impact the duration of the production, number of filming days, the date of commencement of principal photography in CA or date of completion of the project?</b> <i>If yes, please provide details under Supplemental Information on the next page.</i>	<input type="radio"/> yes <input type="radio"/> no
<b>3. Have there been any other significant changes to the information supplied in the Tax Credit application such as a change in the name of the qualified taxpayer? If yes, please describe the changes and the impact on the Production and/or the Film Tax Credit for the Project under Supplemental Information on the next page.</b>	<input type="radio"/> yes <input type="radio"/> no

[illegible]

\_\_\_\_\_  
SIGNATURE

I certify under penalty of perjury under the laws of the State of California that I examined this application, including all attachments and that to the best of my knowledge its content is true and correct.

Signature of Qualified Taxpayer/Representative of Qualified Taxpayer	Title	Date	
Print Name	Telephone #	E-mail Address	
Name of Preparer	Title	Telephone #	Email:



Department Use Only:

DATE RECEIVED:  
FISCAL YEAR:

## California Film & Television Tax Credit Program

### REQUEST FOR TAX CREDIT CERTIFICATE

The applicant is any corporation, partnership, limited partnership, limited liability corporation (LLC) or other entity or individual that is principally engaged in the production of the "qualified motion picture" and that controls the film or television program during pre-production, production and post-production. The applicant is the qualified taxpayer that upon final approval will receive the tax credit certificate.

<b>Credit Allocation Letter #:</b>		<b>Date:</b>	
<b>Production Title:</b>			
<b>Type of Production:</b>			
<b>Production Period:</b>	<b>Start date of pre-production:</b>		
	<b>End date of post-production:</b>		
<b>Qualified Taxpayer:</b>	<b>Name:</b>		
	<b>Title:</b>		
	<b>Company Name:</b>		
	<b>Address:</b>		
	<b>City:</b>	<b>State:</b>	<b>ZIP:</b>
	<b>Phone:</b>	<b>Other:</b>	
	<b>Cell Phone:</b>	<b>Email:</b>	
<b>Qualified Tax ID No:</b>			
<b>Seller's Permit #:</b>			
<b>Copyright Registration #:</b>			
	<b>Tax Credit Allocation DUE:</b>		

I certify under penalty of perjury under the laws of the State of California that I examined this application, including all attachments and that to the best of my knowledge its content is true and correct.

\_\_\_\_\_  
Signature of Qualified Taxpayer/Representative of Qualified Taxpayer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title



## California Film & Television Tax Credit Program

### FISCAL YEAR END EXPENDITURE REPORT

#### APPLICANT INFORMATION

Production Title:	Credit allocation letter #:
Report for Fiscal Year:	Date:

Applicant Name:	Title:
Company Name:	

#### PRODUCTION SCHEDULE (ACTUAL OR PROJECTED)

Start of principal photography:	End date of postproduction:
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#### LABOR STATISTICS

Total Crew/ Staff/Labor Man-Days:	Total Extras & Stand Ins Man-Days:
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#### TAXES

Total Purchases or Rentals subject to Sales Tax:	Total Payroll Taxes Withheld:
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#### QUALIFIED EXPENDITURES

<b>E:</b> Qualified Wages (excluding post):	<b>E2:</b> Qualified Wages Post-Production only:
<b>F:</b> Qualified (Non-Wage) Spend (excl. post):	<b>F2:</b> Qualified ( Non-Wage) Spend Post-Production only:
<b>G:</b> Total Qualified Expenditures ( <b>E+F</b> ) (excluding post):	<b>G2:</b> Total Qualified Expenditures Post-Production only ( <b>E2+F2</b> ):

**This report was prepared by:**

Signature:	Date:
Printed Name & Title:	
Phone:	Email:





## California Film & Television Tax Credit Program

### TAX CREDIT CERTIFICATE

<b>Tax Credit Certificate #:</b>	<input type="text"/>	<b>Fiscal Year:</b>	<input type="text"/>
<b>Credit Allocation Letter #:</b>	<input type="text"/>	<b>Date:</b>	<input type="text"/>
<b>Production Title:</b>	<input type="text"/>		
<b>Type of Production:</b>	<input type="text"/>		
<b>Production Period</b>	<input type="text"/>		
	<input type="text"/>		
<b>Qualified Taxpayer:</b>	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Qualified Taxpayer ID # :</b>	<input type="text"/>		
<b>Seller's Permit # :</b>	<input type="text"/>		
<b>Copyright Registration #:</b>	<input type="text"/>		
	<input type="text"/>		

Pursuant to Revenue and Taxation Code sections 17053.85 and 23685, this document certifies that the above identified qualified tax payer has been granted the amount of Film and Television Tax Credit described as tax credit allocation.

This certificate does not guarantee any tax benefits. Credits may only be claimed on or after January 1, 2011, and only in accordance with the Revenue and Taxation Code. Purchased credits attributable to an independent film may not be used to offset or obtain a refund of sales and use taxes.

Granted by

\_\_\_\_\_  
Amy Lemisch, Director  
California Film Commission

\_\_\_\_\_  
Date

## **BUSINESS, TRANSPORTATION AND HOUSING AGENCY**

### **California Film and Television Tax Credit Program**

Title 10, Chapter 7.75, Sections 5500 - 5507

#### **STATEMENT OF EMERGENCY**

Emergency promulgation of the proposed regulation is necessary for the immediate preservation of the public peace, health and safety, and general welfare of California and its citizens.

On February 20, 2009, legislation took effect immediately establishing the California Film and Television Tax Credit Program. SBX3-15 (Chapter SBX-15) provides a qualified taxpayer a tax credit for qualified expenditures in the production of a qualified motion picture in California for taxable years beginning on or after January 1, 2011. The legislation specifies that the tax credits shall be allowed for the taxable year in which the California Film Commission (CFC) issues the credit certificate, beginning in January 1, 2009 and no later than July 1, 2014. The legislation passed through an extraordinary session of the Legislature addressing the fiscal emergency declared by the Governor in a proclamation on December 19, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

The statute mandates the California Film Commission to begin allocating tax credits to applicants on or after July 1, 2009 and also mandates the CFC to establish a procedure for applicants to file a written application for the allocation of the tax credit, establish criteria for allocating tax credits, determine and designate applicants who meet the requirements to apply for the tax credit, and issue the credit certificate to the qualified taxpayer upon completion of the qualified motion picture.

For the reasons described above, the CFC finds that an emergency declared by both the Governor and the Legislature exists. The CFC also finds that adoption of the regulations mandated to implement the California Film and Television Tax Credit Program by July 1, 2009, is also necessary as emergency regulations.

The state of California has suffered losses in one of its most prominent and economically successful industries - motion picture production - because other regions of the world are aggressively luring motion picture productions by offering attractive financial incentives. Today's economic conditions and the aggressive tactics of other states and countries vying for a piece of the entertainment industry have placed California at a severe disadvantage. Between 2003 and 2008 California experienced a 50% decrease in the number of studio feature films produced in California. In April, 2009, FilmLA, the permitting entity for Los Angeles City and County, reported its lowest quarterly tally for feature filming days since tracking began in 1993. San Francisco film production employment dropped 43% between 2001 and 2006.

Currently over 40 states in the U.S. offer financial incentives to the motion picture industry. The vast majority of these programs offer a percentage of refundable or transferable tax credits, or rebates (typically from 15 – 40%) to productions for qualifying expenditures. The huge growth in state incentive programs has triggered this exodus of film productions from California.

California's new Film & Television Tax Credit Program specifically targets productions that are most likely to leave the state due to incentives being offered in other states and countries. It will enable those making decisions on where to shoot their productions to keep those at risk film and television projects in

California. This legislation will help California to be competitive again enabling it to increase the number of productions and therefore, jobs and dollars spent in state.

The film industry is an important part of the state's economy and directly impacts the revenue generated within the State of California, from employment to goods and services.

The CFC cannot begin allocating the tax credits on July 1, 2009, without promulgating the procedures and criteria for the tax credit program. In addition, the allocation of tax credits is time sensitive, because the statute requires the applicant to apply before the start of filming and no later than 180 days after the tax credit allocation is issued. Therefore any production companies currently ready to start filming, that are weighing their options to film in states that offer tax incentives, would not consider the option of filming in California without the availability of this new incentive program. The promulgation of these regulations on an emergency basis will allow the CFC to begin accepting applications for tax credits immediately.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Film Commission proposes to adopt new sections 5500, 5501, 5502, 5503, 5504, 5505, 5506, and 5507. The regulations establish a procedure for allocating tax credits to qualified taxpayers in the motion picture industry. This tax credit program shall be named the California Film and Television Tax Credit Program.

Section 5500 provides definitions of terms used in the California Film and Television Tax Credit Program. This section defines the Applicant, California Film Commission, Director, Credit Allocation Letter and Total Production Budget. These definitions are specific to this Program. This section also defines the following terms used in the statute or regulation that are industry terms: Basic cable, Feature Film, Miniseries, Movie of the Week, Producer, Reality Program, Strip Show, Television Season, Television Series and Total Production Budget.

Section 5501 provides for an application process for the allocation of the tax credits. This section will provide for the announcement of a period of time when the production companies can apply for eligible tax credits in each fiscal year. The applicants will be required to submit a California Film Commission Application Form and to include supporting documents to establish that they are eligible for the tax credits. These documents include a Budget for the Qualified Motion Picture, a Shooting Schedule, Synopsis of the Screenplay, Screenplay, financial plan, relocation statement, if the production is moving from filming out of state, and an Independent Film Declaration, if applicable. Provisions specific to the television and animated productions are provided for in the application process. This section shall require a production company to apply at least 30 days before the beginning of production and to commence filming no later than 180 calendar days after the Credit Allocation Letter is issued. If the application is incomplete, applicants shall have three days to submit any information or documents requested by the Director or they lose their position in the queue. This program will also require specific production company staff to attend an orientation meeting with the California Film Commission. This section also provides that any television series that has been approved and issued tax credits, shall be placed at the top of the queue for the following open allocation period in the next fiscal year, for the life of that series.

Section 5502 identifies the eligibility requirements for the California Film and Television Tax Credit Program. This section requires that the applicant plans to produce a qualified motion picture and provides that the qualified motion picture must be consistent with the requirements in the Revenue and Taxation Code. It also specifies that the applicants must plan to film at least 75% of principal photography days wholly in California or incur 75% of the production expenditures within California. This section provides

the criteria for a Television Series to qualify as a relocated series. It also specifies that a television pilot does not qualify. This section provides that an independent film that exceeds the maximum budget shall be reclassified as a Feature Film and put back in the queue for any available tax credits. This section also provides that a Movie of the Week and a Mini-Series may also qualify as an independent film, based on the proposed budget.

Section 5503 identifies the provisions in the statute for Qualified Expenditures and clarifies that State and Federal income taxes, CPA fees, expenditures for services performed outside of California and expenditures for exhibition of the production are not qualified expenditures.

Section 5504 provides for the procedures in allocating the tax credits. The section clarifies that the statute provides for the percentage of qualified expenditures allowed for both a feature film and an independent film. This section also provides that if the tax credits have been allocated for the fiscal year, any applications still in the queue will remain in the order received, until allocations become available, the applicant withdraws the application or the end of the fiscal year. This section provides that ten million dollars will be reserved for Independent Films each fiscal year.

Section 5505 establishes reporting requirements for a production company during the filming of the qualified motion picture, including submittal of Daily Call Sheets, final productions reports for Principal Photography, a Monthly Status Report on estimated qualified expenditures and a Fiscal Year-End Expenditure Report.

Section 5506 provides for the issuance of the Credit Certificate, which is the document issued to the qualified taxpayer upon completion of the qualified motion picture. This section requires the applicant to submit documents requesting the tax credit certificate and verifying the completion of the project: proof of copyright registration of the screenplay, letter certifying date of completion of post production, list of all cast, crew, and vendors, the total expenditures and budget, employment records, Final Checker or Galley signed by a production representative, and a report from an independent, California licensed Certified Public Accountant. This section states that if the application is disapproved, the finding is final and not subject to administrative appeal.

Section 5507 requires the holder of the Credit Certificate to comply with promotional requirements, including an on-screen acknowledgement to CFC, five production stills, and an electronic press kit, if available.

This regulation will incorporate by reference the California Film Commission forms that are required to be submitted during the application and filming process.

The following forms shall be required in the initial application process:

California Film and Television Tax Credit Program Application Form, CFC Form A

Financing Sources Report, CFC Form B

Independent Film Declaration, CFC Form C, if the qualified motion picture meets the criteria for an independent film.

The CFC shall issue a Credit Allocation Letter, CFC Form D, which provides the approval of the applicant and identifies the number of tax credits for which the applicant is eligible.

A Monthly Status Report Form, CFC Form I, shall be required to be submitted monthly during principal photography and includes the project status and estimated qualified expenditures changes.

The following forms are required to be submitted upon completion of the production to verify the qualified expenditures:

Expenditure Summary Report, CFC Form F

Employment Diversity Report, CFC Form H

Request for a Tax Credit Certificate, CFC Form J

Fiscal Year End Expenditure Report, CFC Form K

The Tax Credit Certificate, CFC Form M is the actual tax credit certificate that will be issued by the Director of the CFC and is the document that will be submitted to the Franchise Tax Board or the Board of Equalization.

### **AUTHORITY AND REFERENCE**

The proposed regulations have been adopted under the authority of Revenue and Taxation Code section 17053.85(e) and 23685(e) in order to implement, interpret, and make specific Revenue and Taxation Code sections 17053.85(g) and 23685(g).

### **COST ESTIMATES OF PROPOSED ACTION**

The California Film Commission has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant adverse impact on business including the ability of California businesses to compete with businesses in other states: None.
- Potential cost impact on private persons or directly affected businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will (1) facilitate the creation of jobs within California; (2) will facilitate the creation of businesses within California, (3) will facilitate the expansion of businesses currently doing business within California.
- Significant effect on housing: None.

### **EFFECT ON SMALL BUSINESS**

The California Film Commission has determined that the proposed regulations will not directly affect small business. The businesses that are complying with these regulations are not small businesses.

## **REASONABLE ALTERNATIVES CONSIDERED**

The California Film Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.